

Expert Report of Daniel P. Kessler, J.D., Ph.D.

WMT-MDL-01612

WMT-MDL-01612.00001

## **Appendix A**

### **Daniel P. Kessler**

Law School, Graduate School of Business, Hoover Institution,  
and Stanford Institute for Economic Policy Research  
Stanford University  
Stanford, CA 94305  
[fkessler@stanford.edu](mailto:fkessler@stanford.edu)

### **Education**

Ph.D. Economics, Massachusetts Institute of Technology, 1994  
J.D. Stanford Law School, 1993  
B.A. Economics, Harvard University, 1988

### **Academic Positions**

Professor, by courtesy, Stanford School of Medicine, Department of Medicine, Center for  
Primary Care and Outcomes Research, 2021-  
Director of Research, Hoover Institution, 2019-  
Senior Fellow, Stanford Institute for Economic Policy Research, 2016-  
Professor, Stanford Law School, 2009-  
Professor, by courtesy, Stanford School of Medicine, Department of Health Research and Policy,  
2008-20  
David S. and Ann M. Barlow Professor in Management, Graduate School of Business,  
Stanford University, 2007-10  
Visiting Professor, Harvard Law School, 2007  
Senior Fellow, Hoover Institution, Stanford University, 2006-  
Professor, by courtesy, Stanford Law School, 2004-2009  
Professor, Graduate School of Business, Stanford University, 2003-  
Visiting Associate Professor, Wharton School, University of Pennsylvania, 2002-03  
Associate Professor, Graduate School of Business, Stanford University, 1998-2003  
Assistant Professor, Graduate School of Business, Stanford University, 1994-98

### **Awards, Fellowships, and Other University Affiliations**

Affiliate, Stanford Center on Longevity, 2008-  
Health Care Research Award, National Institute for Health Care Management Foundation, 2003  
Fellow, Center for Advanced Study in the Behavioral Sciences, 2003-04  
Graduate School of Business Trust Faculty Fellow, 2000-01  
Affiliate, Center for Social Innovation, Stanford Graduate School of Business, 2000-  
Research Associate, National Bureau of Economic Research, 1999-  
Public Policy Advising Award, Stanford University, 1998  
Kenneth J. Arrow Award for Best Paper in Health Economics, International Health Economics  
Association, 1997  
Affiliate, Center for Health Policy, Stanford University, 1997-  
Class of 1969 Faculty Scholar, Stanford Graduate School of Business, 1997-98  
National Fellow, Hoover Institution, 1997-98  
John M. Olin Faculty Fellow, 1996-97  
Faculty Research Fellow, National Bureau of Economic Research, 1994-99

**Academic Publications**

“The Relationship Between Provider Age and Opioid Prescribing Behavior” with Laurence C. Baker and Grant K. Vaska, *American Journal of Managed Care*, forthcoming.

“Does Multispecialty Practice Enhance Physician Market Power?” with Laurence C. Baker and M. Kate Bundorf, *American Journal of Health Economics* 6(3): 324-47 (2020).

“The Effects of Medicare Advantage on Opioid Use,” with Laurence C. Baker and M. Kate Bundorf, *Journal of Health Economics* 70: 102278 (2020).

“Why Don’t Commercial Health Plans Use Prospective Payment?” with Laurence C. Baker, M. Kate Bundorf, and Aileen M. Devlin, *American Journal of Health Economics* 5(4):465-80 (2019).

“Competition in Outpatient Procedure Markets,” with Laurence C. Baker and M. Kate Bundorf, *Medical Care* 57(1): 36-41 (2019).

“Neurophysiological monitoring during cervical spine surgeries: Longitudinal costs and outcomes,” with John P. Ney, *Clinical Neurophysiology* 129: 2245-51 (2018).

“ACA Marketplace Premiums and Competition Among Hospitals and Physician Practices,” with Maria Polyakova, M. Kate Bundorf, and Laurence C. Baker, *American Journal of Managed Care* 24(2): 85-90 (2018).

“The Effect of Medicare Advantage on Hospital Admissions and Mortality” with Christopher Afendulis and Michael Chernew, *American Journal of Health Economics* 3(2): 254-79 (2017).

“Hospital Ownership of Physicians: Hospital Versus Physician Perspectives” with Laurence C. Baker, Aileen M. Devlin, and M. Kate Bundorf, *Medical Care Research and Review*: 1-12 (2016).

“The Effect of Hospital/Physician Integration on Hospital Choice” with Laurence C. Baker and M. Kate Bundorf, *Journal of Health Economics* 50: 1-8 (2016).

“Medicare Advantage Plans Pay Hospitals Less Than Traditional Medicare Pays” with Laurence C. Baker and M. Kate Bundorf, *Health Affairs* 35: 1444-51 (2016).

“Does Health Plan Generosity Enhance Hospital Market Power?” with Laurence C. Baker and M. Kate Bundorf, *Journal of Health Economics* 44: 54-62 (2015).

“Designing Antitrust Policy for Accountable Care Organizations,” with Laurence C. Baker and M. Kate Bundorf, *Journal of Competition Law & Economics* 11: 317-29 (2015).

“Expanding Patients' Property Rights in Their Medical Records,” with Laurence C. Baker and M. Kate Bundorf, *American Journal of Health Economics* 1: 82-100 (2015).

“Patient Preferences Explain a Small But Significant Share of Regional Variation in Medicare Spending,” with Laurence C. Baker and M. Kate Bundorf, *Health Affairs* 33: 957-63 (2014).

“Vertical Integration: Hospital Ownership of Physician Practices Is Associated With Higher Prices and Spending,” with Laurence C. Baker and M. Kate Bundorf, *Health Affairs* 33: 756-76 (2014).

“Medical Malpractice, Defensive Medicine, and Physician Supply,” in the *Encyclopedia of Health Economics*, Volume 2, ed. Anthony J. Culyer, Elsevier (2014).

“Why Are Medicare and Commercial Insurance Spending Weakly Correlated?” with Laurence C. Baker and M. Kate Bundorf, *American Journal of Managed Care* 20: e8-e14 (2014).

“Regulatory Neutrality Is Essential To Establishing A Level Playing Field For Accountable Care Organizations” with Gary E. Bacher, Michael E. Chernen, and Stephen M. Weiner, *Health Affairs* 32: 1426-32 (2013).

“Reforming Medicare,” *Tax Law Review* 65 (2012): 811-833.

“How Should Risk Adjustment Data Be Collected?” *Inquiry* 49 (Summer 2012): 127-140.

“Reforming the Tax Preference for Employer Health Insurance,” with Joseph Bankman, John F. Cogan, and R. Glenn Hubbard, in *Tax Policy and the Economy*, Volume 26, ed. Jeffrey Brown, MIT Press (2011).

“Vertical Integration and Optimal Reimbursement Policy,” with Christopher C. Afendulis, *International Journal of Health Care Finance and Economics* 11 (2011): 165-179.

“The Effect of Tax Preferences on Health Spending,” with John F. Cogan and R. Glenn Hubbard, *National Tax Journal* 64 (September 2011): 795-816.

“The Effect of Bivalirudin on Costs and Outcomes of Treatment of ST-segment Elevation Myocardial Infarction,” with Eugene Kroch and Mark A. Hlatky, *American Heart Journal* 162 (2011): 494-500.

“Evaluating the Medical Malpractice System and Options for Reform,” *Journal of Economic Perspectives* 25 (2011): 93-110.

“Does Patient Satisfaction Affect Patient Loyalty?” with Deirdre Mylod, *International Journal of Health Care Quality Assurance* 24 (2011): 266-73.

*Regulation versus Litigation: Perspectives from Economics and Law*, ed., University of Chicago Press (2011).

- “The Persuasive Effects of Direct Mail: A Regression Discontinuity Approach,” with Alan Gerber and Marc Meredith, *Journal of Politics* 73 (January 2011): 140-55.
- “HMO Coverage Reduces Variations in the Use of Health Care Among Patients Under Age Sixty-five” with Laurence Baker and M. Kate Bundorf, *Health Affairs* 29 (November 2010): 2068-74.
- “The Effect of Massachusetts Health Reform on Employer-sponsored Insurance Premiums,” with John F. Cogan and R. Glenn Hubbard, *Forum for Health Economics and Policy* 13 (2010): article 5.
- “The Effect of Medicare Coverage for the Disabled on the Market for Private Insurance,” with John F. Cogan and R. Glenn Hubbard, *Journal of Health Economics* 29 (May 2010): pp. 418-25.
- “Why Is Health Reform So Difficult?” with David Brady, *Journal of Health Politics, Policy, and Law* 35 (April 2010): 161-75.
- “Who Supports Health Reform?” with David Brady, *PS: Political Science and Politics* 43 (January 2010): 1-6.
- “Putting the Public’s Money Where Its Mouth Is,” with David Brady, *Health Affairs* 28 (September/October 2009): w917-w925.
- “Do Markets Respond to Quality Information? The Case of Fertility Clinics,” with M. Kate Bundorf, Natalie Chun, and Gopi Shah Goda, *Journal of Health Economics* 28 (2009): 718-27.
- “Empirical Study of the Civil Justice System,” with Daniel L. Rubinfeld, in the *Handbook of Law and Economics*, eds. A. Mitchell Polinsky and Steven Shavell, North-Holland (2007).
- “Tradeoffs from Integrating Diagnosis and Treatment in Markets for Health Care,” with Christopher Afendulis, *American Economic Review* 97 (June 2007): 1013-20.
- “Evaluating Effects of Tax Preferences on Health Care Spending and Federal Revenues,” with John F. Cogan and R. Glenn Hubbard, in *Tax Policy and the Economy, Volume 21*, ed. James Poterba, MIT Press (2007).
- “The Effects of the Medical Liability System in Australia, the UK, and the US,” with Nicholas Summerton and John R. Graham, *Lancet* 368 (2006): 240-46.
- “The Effect of Cardiac Specialty Hospitals on the Cost and Quality of Care,” with Jason Barro and Robert Huckman, *Journal of Health Economics* 25 (2006): 702-21.

“The Effects of the US Malpractice System on the Cost and Quality of Care,” with David Becker, in *Medical Malpractice and the US Health Care System: New Century, Different Issues*, eds. William Sage and Rogan Kirsch, Cambridge University Press (2006).

“Making Markets Work: Five Steps to a Better Health Care System,” with John F. Cogan and R. Glenn Hubbard, *Health Affairs* 24 (November/December 2005): 1447-57.

*Healthy, Wealthy, and Wise: Five Steps to a Better Health Care System*, with John F. Cogan and R. Glenn Hubbard, Hoover Institution/AEI Press (1st. ed., 2005; 2nd. ed., 2011).

“The Effects of Competition on Variation in the Quality and Cost of Medical Care,” with Jeffrey Geppert, *Journal of Economics and Management Strategy* 14 (2005): 575-89.

“Impact of Malpractice Reforms on the Supply of Physician Services,” with David Becker and William Sage, *JAMA* 293 (6/1/05): 2618-25.

“Detecting Medicare Abuse,” with David Becker and Mark McClellan, *Journal of Health Economics* 24 (2005): 189-210.

“The Medical Liability System: Current Debates,” in *Power to the Patient: Selected Health Care Issues and Policy Solutions*, ed. Scott W. Atlas, Hoover Institution Press (2005).

“Toward Better Drugs for Less (book review),” *Science* 306 (12/24/04): 2192-3.

“Advance Directives and Medical Treatment at the End of Life,” with Mark McClellan, *Journal of Health Economics* 23 (2004): 111-27.

“Is More Information Better? The Effects of ‘Report Cards’ on Health Care Providers,” with David Dranove, Mark McClellan, and Mark Satterthwaite, *Journal of Political Economy* 111 (2003), pp. 555-88.

“Ownership Form and Trapped Capital in the Hospital Industry,” with Henry Hansmann and Mark McClellan, in *The Governance of Not-for-Profit Firms*, Edward L. Glaeser ed., University of Chicago Press (2003).

“How Liability Law Affects Medical Productivity,” with Mark McClellan, *Journal of Health Economics* 21 (2002), pp. 931-55.

“The Effects of Hospital Ownership on Medical Productivity,” with Mark McClellan, *RAND Journal of Economics* 33 (Autumn 2002), pp. 488-506.

*A Global Analysis of Technological Change in Health Care: Heart Attack*, ed., with Mark McClellan, University of Michigan Press (2002).

“Technological Change in Heart Attack Care in the United States: Causes and Consequences,” with Mark McClellan, Nathan Every, Alan Garber, Paul Heidenreich, Mark Hlatky, Joseph Newhouse, and Olga Saynina, in *A Global Analysis of Technological Change in Health Care: Heart Attack*, ed., with Mark McClellan, University of Michigan Press (2002).

“Malpractice Pressure, Managed Care, and Physician Behavior,” with Mark McClellan, in *Regulation Through Litigation*, W. Kip Viscusi ed., Brookings Institution Press (2002).

“Does Party Matter in Senators’ Voting Behavior? An Historical Test Using Tariff Votes,” with David Brady and Judith Goldstein, *Journal of Law, Economics, and Organization* 18 (April 2002), pp. 140-54.

“Malpractice Law and Health Care Reform: Optimal Liability Policy in an Era of Managed Care,” with Mark McClellan, *Journal of Public Economics* 84 (2002), pp. 175-197.

“Technological Change Around the World: Evidence from Heart Attack Care,” authored as the TECH Research Network, *Health Affairs* 20 (May/June 2001), pp. 25-42.

“Prevailing Wage Laws and Construction Labor Markets,” with Lawrence Katz, *Industrial and Labor Relations Review* 54 (January 2001), pp. 259-74.

“What Do Prosecutors Maximize? An Analysis of the Federalization of Drug Crimes,” with Anne Morrison Piehl and Edward Glaeser, *American Law and Economics Review* 2 (2000), pp. 259-90.

Review of *Measuring the Prices of Medical Treatments* (Jack E. Triplett, ed.), *Journal of Economic Literature* XXXVIII (September 2000), pp. 664-6.

“Is Hospital Competition Socially Wasteful?” with Mark McClellan, *Quarterly Journal of Economics* 115 (May 2000), pp. 577-615.

“Designing Hospital Antitrust Policy to Promote Social Welfare,” with Mark McClellan, in *Frontiers in Health Policy Research: Volume 2*, ed. Alan Garber, MIT Press (1999).

“A Global Analysis of Technological Change in Health Care: The Case of Heart Attacks,” with Mark McClellan for the TECH Investigators, *Health Affairs* 18 (May/June 1999), pp. 250-55.

“Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation,” with Steven Levitt, *Journal of Law and Economics* 42 (April 1999), pp. 343-365.

“The Link Between Liability Reforms and Productivity: Some Empirical Evidence,” with Thomas Campbell and George Shepherd, *Brookings Papers on Economic Activity: Microeconomics* (1998).



“The Role of Discretion in the Criminal Justice System,” with Anne Morrison Piehl, *Journal of Law, Economics, and Organization* 14 (Winter 1998), pp. 256-276.

“The Law and Economics of Tying Arrangements: Lessons for Competition Policy Treatment of Intellectual Property,” with William Baxter, in *Competition Policy and Intellectual Property Rights in the Knowledge-Based Economy*, eds. Robert Anderson and Nancy Gallini, Industry Canada Research Series, University of Calgary Press (1998).

“The Effects of Malpractice Pressure and Liability Reforms on Physicians’ Perceptions of Medical Care,” with Mark McClellan, *Law and Contemporary Problems* 60 (Winter 1997), pp. 81-106.

“Institutional Causes of Delay in the Settlement of Legal Disputes,” *Journal of Law, Economics, and Organization* 12 (Winter 1996), pp. 432-460.

“Dynamics of Cosponsorship,” with Keith Krehbiel, *American Political Science Review* 90 (September 1996), pp. 555-566.

“Do Doctors Practice Defensive Medicine?” with Mark McClellan, *Quarterly Journal of Economics* 111 (May 1996), pp. 353-390.

“Explaining Deviations from the Fifty Percent Rule: A Multimodal Approach to the Selection of Cases for Litigation,” with Thomas Meites and Geoffrey Miller, *Journal of Legal Studies* 35 (January 1996), pp. 233-261.

“Liability Reforms and Economic Performance,” with Thomas Campbell and George Shepherd, in *The Mosaic of Economic Growth*, eds. Ralph Landau, Timothy Taylor, and Gavin Wright, Stanford University Press (1996).

“Fault, Settlement, and Negligence Law,” *RAND Journal of Economics* 26 (Summer 1995), pp. 296-313.

“Toward a Consistent Theory of the Welfare Analysis of Agreements,” with William Baxter, *Stanford Law Review* 47 (April 1995), pp. 301-317.

“Birth Order, Family Size, and Achievement: Family Structure and Wage Determination,” *Journal of Labor Economics* 9 (October 1991), pp. 413-426.

#### **Academic Manuscripts in Progress**

“The Responsiveness of Medicaid Spending to the Federal Subsidy,” with M. Kate Bundorf, NBER Working Paper 29492.

“Can Ranking Hospitals on the Basis of Patients’ Travel Distances Improve Quality of Care?” NBER Working Paper 11419.



**Nonacademic Publications**

“A Simple Fix Can Bring Revolutionary Change to Health Spending,” *The Hill*, September 26, 2021.

“Hospital Ownership of Physician Practices,” *One Percent Steps for Health Care Reform*, February 2021.

“The Health of Obamacare,” *Wall Street Journal*, December 11, 2015, p. C3.

“By Reducing Competition, ObamaCare Raises Costs,” *Investor’s Business Daily*, June 11, 2014, p. A13.

“ObamaCare is Raising Insurance Costs,” *Wall Street Journal*, June 4, 2013, p. A13.

“The Coming ObamaCare Shock,” *Wall Street Journal*, April 30, 2013, p. A17.

“ObamaCare’s Broken Promises,” *Wall Street Journal*, February 1, 2013, p. A13.

“Real Medicare Reform,” *National Affairs*, Fall 2012.

“The Wrong Remedy for Health Care,” *Wall Street Journal*, June 29, 2012, p. A13.

“ObamaCare’s Bogus Cost Savings,” *Wall Street Journal*, March 14, 2012, p. A12.

“Medicare Reform: Obama vs. Ryan,” with John Taylor, *Wall Street Journal*, August 17, 2011, p. A15.

“How Health Reform Punishes Work,” *Wall Street Journal*, April 25, 2011, p. A15.

“ObamaCare and the Truth About Cost Shifting,” with John F. Cogan and R. Glenn Hubbard, *Wall Street Journal*, March 11, 2011, p. A15.

“Voters on Obamacare: Informed and Opposed,” with David W. Brady and Douglas Rivers, *Wall Street Journal*, October 15, 2010, p. A17.

“Health Care: The Prognosis,” with John F. Cogan, *Hoover Digest* (2010).

“A Better Way to Reform Health Care,” with John F. Cogan and R. Glenn Hubbard, *Wall Street Journal*, February 25, 2010, p. A13.

“Health Care Is Hurting Democrats,” with David W. Brady and Douglas Rivers, *Wall Street Journal*, January 19, 2010, p. A17.

“Public Opinion and Health Reform,” with David W. Brady, *Wall Street Journal*, October 22, 2009, p. A15.

“Doubling Down on a Flawed Insurance Model,” with John F. Cogan and R. Glenn Hubbard, *Wall Street Journal*, September 25, 2009, p. A15.

“The Uninsured’s Hidden Tax on Health Insurance Premiums in California: How Reliable is the Evidence?” with John F. Cogan, Matthew Gunn, and Evan J. Lodes, *Hoover Essays in Public Policy* (2007).

“Not a Panacea...” with John F. Cogan and R. Glenn Hubbard, *Wall Street Journal*, February 9, 2006, p. A12.

“Keep Government Out,” with John F. Cogan and R. Glenn Hubbard, *Wall Street Journal*, January 13, 2006, p. A12.

“Reforming Health Care,” *Hoover Digest* (2005).

“Reforming Malpractice Liability,” *Hoover Digest* (2005).

“Brilliant Deduction” with John F. Cogan and R. Glenn Hubbard, *Wall Street Journal*, December 8, 2004, p. A12.

“Healthy, Wealthy, and Wise,” with John F. Cogan and R. Glenn Hubbard, *Wall Street Journal*, May 4, 2004, p. A20.

“Want to Sue HMOs? It’ll Cost You,” *Wall Street Journal*, July 25, 2001, p. A16.

“The Economic Effects of the Liability System,” *Hoover Essays in Public Policy* (1998).

“Robbing Smokers to Pay Lawyers,” with Jeremy Bulow, *Wall Street Journal*, April 7, 1998, p. A16.

“If You Smoke, Florida Wants to Tax You,” with Jeremy Bulow, *Wall Street Journal*, November 26, 1997, p. A16.

### **Case Studies**

“Asian Neighborhood Design,” with Lauren Dutton and Melinda Tuan, Stanford GSB (1998) (updated in 2003 by Rick Aubry and Susan Mackenzie).

“The Roberts Enterprise Development Fund,” with Lauren Dutton, Jed Emerson, and Melinda Tuan, Stanford GSB (1998).

“Echelon and the Home Automation Standard,” with David Baron, Keith Krehbiel, Erik Johnson, and Michael Ting, Stanford GSB (1997).

“The European Union Carbon Tax,” with David Baron and Daniel Diermeier, Stanford GSB (1996).

**Unpublished Reports**

“Cost Shifting in California Hospitals: What is the Effect on Private Payers?” for the California Foundation for Commerce and Education (2007).

“The Determinants of the Cost of Medical Liability Insurance,” for Physician Insurers Association of America (2006).

“The Effects of Behavioral Health Interventions on Health Care Costs,” for the Foundation for Better Health (2005).

“The Effects of Pharmaceutical Price Controls on the Cost and Quality of Medical Care: A Review of the Empirical Literature,” for Pharmaceutical Research and Manufacturers of America (2004).

“The Impact of the Balanced Budget Act of 1997 on Skilled Nursing Care in California,” with Chris Afendulis, Jeffrey Geppert, and Owen Kearney, for the California Health Care Foundation (2003).

**Referee/Reviewer**

American Cancer Society; *American Journal of Health Economics*; *American Economic Review*; *Health Affairs*; *Journal of Health Economics*; *Journal of Health Politics, Policy, and Law*; *Journal of Law, Economics, and Organization*; *Journal of Law and Economics*; *Journal of Legal Studies*; *Journal of Political Economy*; National Science Foundation; National Institutes of Health; *RAND Journal of Economics*; *Quarterly Journal of Economics*

Kessler testimony in previous four years

- *People of the State of California ex rel. State Farm Mutual Auto Insurance Co. v. Ramin Aghaei, D.C., et al.*, Superior Court of the State of California, County of Los Angeles, Central District, Case No. BC656651 (deposition testimony).
- *Jeffrey Neufeld et al. v. Cigna Health Corporation*, United States District Court, District of Connecticut, Case No. 3:17-cv-1693-KAD (report and deposition testimony).
- Confidential AHLA arbitration involving Cigna Health Corporation (reports and arbitration testimony).
- *In re: Opioid Litigation*, Supreme Court of the State of New York, County of Suffolk, Index No. 400008/2017 (Nassau) and 400001/2017 (Suffolk) (reports and deposition testimony).
- *In re: National Prescription Opiate Litigation*, Case No. 1:17-MD-2804 (reports and deposition testimony).
- *State of Washington v. Franciscan Health System, et al.*, United States District Court, Western District of Washington, Case No. 17-cv-05690-BHS (reports and deposition testimony).
- *Peters v. Aetna Inc., et al.*, United States District Court, Western District of North Carolina, Case No. 1:15-cv-00109-MR (reports and deposition testimony).
- *BRFHH Shreveport, et al. v. Willis-Knighton Medical Center*, United States District Court, Western District of Louisiana, Case No. 15-cv-2057 (reports and deposition testimony).